S.B.CIVIL WRIT PETITION NO.5359/1994

The Executive Engineer, PHED, Phalodi & Ors.
v.
Labour Court, Jodhpur and another.

DATE OF ORDER :: 8th May, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.S.Ladrecha, Additional Government Advocate.
Mr. Vijay Mehta, for the respondents.

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The Executive Engineer, Public Health & Engineering Department (District Division) Phalodi by this petition for writ has questioned validity, propriety and correctness of the award dated 20.9.1994 passed by the Industrial Tribunal-cum-Labour Court, Jodhpur in Labour Dispute No.19/1989.

By the award impugned the Labour Court while answering reference made to it by appropriate government directed the employer to promote the petitioner as Pump Driver from the date it was accorded to his junior Shri Bal Mukund. The respondent workman was also declared entitled for all consequential benefits including confirmant of semi permanent status and confirmation in service from the date it was granted to the persons junior than the respondent workman.

In brief, the facts of the case are that the respondent workman was employed as Helper Gr.II in the office of the Executive Engineer, District Division

First, Public Health & Engineering Department, Jodhpur on 27.3.1978 whereas certain other persons viz. Sarva Shri Bal Mukund, Chhail Singh and Prakash Mathur etc. were employed at a subsequent stage, however, promotion was accorded by the employer to the persons junior than the respondent workman named above as Pump Drivers on 19.6.1978 ignoring his seniority. Before the Labour Court a stance was taken by the employer that the persons to whom appointment was accorded as Pump Drivers were recruited as such by way of direct recruitment and not by way of promotion and, therefore, the allegation of supercession was denied. The Labour Court after considering the entire evidence available on record reached at the conclusion that no selection proceedings were conducted by the employer and as a matter of fact the appointments were given to the persons junior than the workman by way of promotion. On basis of the finding above a direction was given to promote the petitioner as Pump Driver from the date promotions were accorded to the persons junior to the respondent workman.

While giving challenge to the award impugned the contention of counsel for the petitioners is that the Labour Court by ignoring the documents dated 21.1.1980 (Anx.1) and dated 15.2.1980 (Anx.2) reached at an erroneous finding to the effect that appointments to Sarva Shri Bal Mukund, Chhail Singh and Prakash Mathur were given by way of promotion. The

order dated 21.1.1980 (Anx.1) is an office order whereby the applications were invited from eligible candidates to face selection proceedings by way of direct recruitment and by order dated 15.2.1980 (Anx.2) appointment was accorded to Shri Bal Mukund and Shri Chhail Singh as Pump Drivers by way of direct recruitment.

Heard counsel for the parties and examined the award impugned as well as the documents dated 21.1.1980 (Anx.1) and dated 15.2.1980 (Anx.2).

From perusal of the order dated 21.1.1980 (Anx.1) it is apparent that the order aforesaid was issued by the Executive Engineer, Public Health & Engineering Department inviting applications from the persons already working with the Department to be considered for appointment as Pump Drivers and for certain other posts. Relevant to note that under the Rules a direct recruitment is required to be made from open market and not by confining to the existing employees of the department, as such the office order dated 21.1.1980 cannot be treated as a notification for direct recruitment. Similarly, the order dated 15.2.1980 (Anx.2) is of no consequence as by order aforesaid appointment was accorded to Shri Bal Mukund and Shri Chhail Singh as an stopgap arrangement. By no stretch of imagination the order dated 15.2.1980 can be treated as an order of direct recruitment on

regular basis. The appointment under the order dated 15.2.1980 was subject to availability of selected incumbents by way of promotion. It is also pertinent to note that both the orders referred above were not produced by the employer before the Labour Court. The Labour Court by considering entire material produced before it by the employer gave a finding of fact that appointments of Shri Bal Mukund and Shri Chhail Singh were not made by way of direct recruitment. The finding aforesaid is based on sound appreciation of evidence available on record and that does not warrant interference of this Court under Articles 226 and 227 of the Constitution of India.

Accordingly, this petition for writ is dismissed.

( GOVIND MATHUR ),J.

Kkm/ps.